Testimony of Debbie Bassert, Assistant Vice President, Land Use Policy, National Association of Home Builders

Before the Senate Housing, Banking and Urban Affairs Committee's

Symposium on "Creating Livable Communities: Housing and Transit Policy in the 21st Century"

March 26, 2009

The National Association of Home Builders (NAHB) appreciates the opportunity to provide testimony at today's symposium on "Creating Livable Communities: Housing and Transit Policy in the 21st Century."

The NAHB is a Washington, D.C.-based trade association representing more than 200,000 members involved in home building, remodeling, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing and other aspects of residential and light commercial construction. Known as "the voice of the housing industry," NAHB is affiliated with more than 800 state and local home builders associations around the country. NAHB's builder members will construct about 80 percent of the new housing units projected for 2009.

I speak to you today on behalf of our members' and their experience with developing Smart Growth, mixed use, and transit-oriented development projects in the past, as well as during the current economic downturn.

NAHB recognizes that the demographics of homebuyers have become increasingly diverse, and as a result, over the past several years our industry has significantly expanded the types of homes and communities we build in response to this market demand. In doing so, we have learned that there is no single form of development that will meet every need. Most our members are still primarily small- to medium-size builders and developers who do mostly single family residential development. But many have now undertaken infill, redevelopment, Smart Growth, mixed use, and mixed residential projects in urban, suburban and even rural areas.

Since 1999, NAHB has had policy on Smart Growth. The key elements of NAHB's Smart Growth policy include the following:

- Anticipating and planning for economic development and growth in a timely, orderly and predictable manner;

- Establishing a long-term comprehensive plan in each local jurisdiction that makes available an ample supply of land for residential, commercial, recreational and industrial uses as well as taking extra care to set aside meaningful open space and to protect environmentally sensitive areas;

- Removing barriers to allow innovative land-use planning techniques to be used in building higher density and mixed use developments as well as infill developments in suburban and inner city neighborhoods;

- Planning and constructing new schools, roads, water and sewer treatment facilities and other public infrastructure in a timely manner to keep pace with the current and future demand for housing, and finding a fair and broad-based way to underwrite the costs of infrastructure investment that benefits the entire community;

- Achieving a reasonable balance in the land-use planning process by using innovative planning concepts to protect the environment and preserve meaningful open space, improve traffic flow, relieve overcrowded schools and enhance the quality of life for all residents; and

- Ensuring that the process for reviewing site-specific land development applications is reasonable, predictable and fair for applicants and contiguous neighbors.

In addition, we are also a partner in two national award programs that highlight noteworthy Smart Growth and mixed use developments—the Best Smart Growth community category of the Best in American Living Awards program, co-sponsored by NAHB and Professional Builder magazine; and the Livable Communities award program with AARP. These development success stories are regularly featured in our national quarterly magazine *Land Development* and in educational programs and conferences throughout the year, with the goal of helping our members and others understand what's involved in getting such projects approved and constructed. We have also commissioned considerable third party research over the past five years on the issues of state and local housing affordability solutions as well as innovative infrastructure financing tools, and we have many resources on these issues that are free and publicly available at www.nahb.org.

So we have been enthusiastic participants in these efforts, from the grassroots on up to the national level. With this experience in mind, we would like to share with you some of what we have learned about the challenges of planning, developing, and building communities that satisfy multiple needs and requirements.

Developers who undertake Smart Growth projects do so because they have bought in to the concept. However, while more of our members are building such projects, and it has become somewhat easier to obtain development permits to build them, they remain riskier and more complex undertakings for a variety of reasons. For example, urban projects in particular often necessitate multiple private investors as well as elaborate public-private sector cooperation and collaboration arrangements that often take a significant amount of additional time and effort to solidify.

Obtaining Development Approvals

In general, obtaining state and local development approvals, or entitlements, for Smart Growth developments is not as big a problem as it once was because local governments and planners are now more in favor of this type of development, at least in principle. Yet the entitlements process can take as long as two to four years in many areas of the country, and not just the sophisticated metropolitan areas. This time commitment adds to the financial risk and uncertainty of all development.

In addition, innovative developments are still typically subject to greater case-by-case scrutiny in the development process, particularly because they are usually proposed in areas that are already substantially developed and so have many existing residents nearby. Communities say they want Smart Growth or mixed use or Transit-Oriented Development (TOD) but then, in response to citizen or “NIMBY” concerns about the impact on schools or traffic, they typically begin to whittle back the allowed and proposed residential densities to ameliorate these concerns. Such reactions can quickly undermine the very concept the community is trying to create and affect the viability of the project.

A local example in Howard County, Maryland, the Maple Lawn Farm project proposed a number of years ago was completely in line with the vision expressed in the county’s award-winning comprehensive plan. Yet public sentiment against the project was so strong that the developer was subjected to no less than 40 public meetings and hearings and had to make numerous concessions to the development plan in order to garner approval of the project. These concessions nearly spelled the doom of the project from a feasibility standpoint.

Development Economics

This trend in citizens becoming increasingly involved in the details of a development deal is not unusual today. Developers are being asked to include more and more amenities and public benefits in their projects, some of which are requested upfront as a guarantee that they will be built, and this also adds considerable cost.

In conjunction with these add-ons, communities increasingly impose formulaic requirements for the ratio of residential/commercial or market rate/affordable units that are difficult to achieve, especially in a changing market.

Many close-in properties have added complexities because they are not clean pieces of land. On a TOD project near the Prince George's Plaza metro station in nearby Hyattsville, Maryland, on a parcel that was adjacent to WMATA (Metro) property, negotiations with WMATA over parking, relocating utilities and other issues caused the project to be delayed by more than a year.

Smart growth projects are typically more capital intensive. They may include items such as structured parking and are often front-loaded with extra amenity and infrastructure costs. These add-ons can quickly overload and overwhelm a project and challenge its economic viability.

Higher project costs also make it harder to get mom and pop scale retail to work as well, so retail often ends up being high end and not necessarily geared to the population the community envisions attracting to such developments. If there is no market for the retail early on and sustained over time, it can fall apart all together.

There are increasing stories about the difficulties associated with residential sustaining retail in mixed use developments. This problem is especially visible now as retail and commercial uses are suffering during the current economic downturn. For example, in one project in Maryland, the commercial/retail establishments are currently being subsidized to keep them viable. In a recent small condo project in Washington, DC, with a ground-floor restaurant on the premises, residents are being assessed an unexpected additional fee to cover the condo fees that the now bankrupt restaurant owner failed to pay.

Affordability and Market Challenges

Because land costs on urban projects are often higher to begin with, and their development creates added value, it is a particular challenge to make them affordable and then sustain that affordability over time. Mandates for a particular percentage of affordable units, a common governmental solution, have an impact on the market priced units that help subsidize the affordable units, and there are many administrative and implementation complexities associated with such requirements. The public sector can play a valuable role in helping buy down either the cost of the land or the infrastructure in such projects to make affordability more achievable.

Finally, the notion of “build it and they will come” doesn’t always work, because there is often too narrow a demographic range of people who can both afford to live in such projects and want to live there. Thus, such developments do not actually end up being mixed income in nature as originally intended. Transit Oriented Development projects built to date, in particular, often do not serve families well in terms of the availability of amenities and surrounding support services.

Development Financing

TOD projects in particular tend to be much more capital intensive, which requires greater equity investment. This type of project often requires more developers/financial players, and this in turn makes the endeavor even riskier. It is not at all unusual for the financial players to change mid-stream, especially during in this current economic environment. Sometimes banks end up taking over a project that used to belong to a developer—and this is not a new phenomenon.

Public-private partnership arrangements add to the complexity. In addition, if any public funding streams or incentive programs are applied to the project, they often come with constraints or limitations that often conflict across different programs.

Further, there is the ongoing thorniness of how to obtain loans for mixed use development. Even during the development boom, many bankers were wary and uncertain about how and whether to finance these projects. The fact that the details of each separate project are unique continues to provide a challenge for the comparables basis of lending. Obtaining Acquisition, Development and Construction (or AD&C) lending for anything is a real challenge right now as a result of the financial market crisis, and banks are struggling to understand how to realign appraisals for individual uses, much less mixed uses. Developers in complex projects have to keep their equity partners happy, and very, very few have pockets deep enough to pull off these projects in the current environment.

Despite all of the challenges, NAHB does support Smart Growth, and we are pleased that so many of the stakeholders – state housing authorities, local governments, developers and many others – have gotten much better at working collaboratively to make such projects successful.

What Can the Federal Government Do to Help?

NAHB believes that locally elected governments are best suited to balance competing interests and to communicate and cooperate with neighboring jurisdictions. Local policy makers are most closely involved in the communities they serve, and their decisions, based on direct citizen input; best reflect the needs, desires and priorities of their communities. Yet the federal government may be able to play a beneficial supporting role in Smart Growth projects. The federal government could:

1) Offer planning assistance grants to local communities to update local plans so that housing, jobs, and infrastructure are better integrated;

2) Create federal grants to help with the financing of these riskier and financially challenging projects that are flexible enough to allow public and private sector to carefully craft details that make sense locally;

3) Take care to ensure that incentive programs do not become laden with onerous constraints on how they can be used, as these often work against other programs at the local, state, or federal level and end up not being used at all; and

4) Urge Congress to partner with local communities looking to encourage TOD developments in order to ensure that existing transit systems have the capacity to serve the new riders or that they can obtain the funding needed to expand those systems.

In sum, because these projects are more complex than conventional developments, this makes their details unique as well as more subject to change when the market fluctuates. Any incentives or grant programs need to be flexible to account for their differences.

Thank you for the opportunity to appear before you today.